

Realignment and Closure of Military Installations: The Major Differences between the 2001 and Prior BRAC Laws

Title XXX of the National Defense Authorization Act for Fiscal Year 2002, enacted into law in December 2001, authorized the upcoming 2005 base realignment and closure (BRAC) round. While the 2005 BRAC process will be similar in many ways to the previous BRAC rounds (1988, 1991, 1993, and 1995), the legislation did make a number of important changes to the 1990 law that authorized the previous three rounds. These changes are summarized below.

1. Number of Rounds:

New law—Authorizes a single round of BRAC in 2005 for the Department of Defense.

Old law—A BRAC round was authorized to be conducted in 1988, and the 1990 law authorized the 1991, 1993, and 1995 rounds.

2. Criteria established in law:

New law—Provides that military value is the primary consideration that the Secretary of Defense must consider, and specifically defines military value to include the following considerations:

- Preservation of training areas suitable for maneuver by ground, naval, or air forces to guarantee future availability of such areas for Armed forces readiness;
- Preservation of bases around the United States as staging areas for engagement in homeland defense missions;
- Preservation of a sufficient diversity of climate and terrain around the nation for training purposes;
- Impact on joint warfare, training, and readiness; and
- Contingency, mobilization, and future total force requirements at both existing and potential receiving locations.

The law also requires that the following factors be considered by the Secretary:

- The extent and timing of potential costs and savings, including manpower implications, beginning with the date of the completion of the closure or realignment, for the savings to exceed the costs;
- The ability of both existing and potential receiving communities' infrastructure to support forces, missions and personnel; and
- The impact of costs related to potential environmental restoration, waste management, and environmental compliance activities.

Old law—Required Secretary of Defense to develop criteria, but with no requirement to address any specific criteria or factors.

3. Comparison of force structure plan to infrastructure inventory required:

New law—Requires the Secretary of Defense to submit a detailed force structure plan in February, 2004, that includes specific information on required end strengths and major service organizational elements (Army divisions, Navy ships, Air Wings, etcetera). The Secretary must consider threats 20 years into the future and must provide Congress with an infrastructure plan that supports the identified force structure. Such a plan must contain a specific discussion of the categories of excess infrastructure and capacity as well as an economic analysis of the options to eliminate any identified excess. The Secretary must also consider the continuing need for and availability of overseas bases in determining the needs for infrastructure in the United States.

Old law—The Secretary of Defense was required to submit a force structure plan in the year the BRAC was executed, giving the Congress no chance to react to the department's long-term force structure assumptions. The force structure plan arrived just weeks before the military services submitted their BRAC recommendations to the BRAC commission. Additionally, the old law only required that the Secretary look six years into the future, made no provision for a comprehensive infrastructure plan, had no requirement that the Secretary compare the available infrastructure and force structure, and no requirement to consider the potential loss of overseas bases.

4. Certification of need for BRAC:

New law—Requires the Secretary of Defense to compare the force structure plan and the infrastructure inventory as described above, and certify to Congress that proceeding with the base closure process is necessary and justified. Additionally, the Secretary of Defense is required to certify that his recommendations under this base closure authority would result in annual net savings in each of the military departments within six years of the submission of the closure list.

Old law—No such provisions.

5. Authority to retain inactive bases:

New law—Allows the Secretary of Defense to propose to place bases into a caretaker status if the base may be needed in the future for national security or other purposes.

Old law—No such provisions.

6. Comptroller General review:

New law—Directs the Comptroller General to review the Secretary's force structure plan, the infrastructure inventory, and base closure criteria and report to

the Senate and House Committees on Armed Services whether the Secretary's recommendations support the need for base closure.

Old law—No such provisions.

7. BRAC Commission expanded:

New law—Provides for a commission of nine members, of which six are appointed after consultation with Congress (two in consultation with Senate Majority Leader, two in consultation with House Speaker, one in consultation with Senate Minority Leader, and one in consultation with House Minority Leader).

Old law—Provided for an eight member commission, of which six were appointed after consultation with Congress (two in consultation with Senate Majority Leader, two in consultation with House Speaker, one in consultation with Senate Minority Leader, and one in consultation with House Minority Leader).

8. Changes to BRAC Commission procedures:

New law—Before the commission may add a base to the list of bases being considered for closure, the commission must first provide the Secretary a 15-day period to rebut the proposal. After consideration of the Secretary's views, the decision to add a base to the closure list would have to be approved by at least seven of the nine commissioners. A decision to remove a base from the closure list continues to require a simple majority of the nine commissioners.

Old law—No such provisions.

New law—Provides that the commission give the Secretary of Defense an opportunity to testify before the commission on any proposed changes to the Secretary's recommendations and allows the commission 48 hours to forward information from the Department of Defense to Congress.

Old law—No requirement for the Secretary to testify concerning proposed commission changes. Previously, the commission had 24 hours to forward information to Congress.

New law—Provides that at least two commissioners visit an installation that was not on the list of bases recommended for closure by the Secretary of Defense before the commission may recommend the base for closure in its final report to the President (this provision added by Section 2854 of the Fiscal Year 2003 Defense Authorization Act).

Old law—No such provision.

9. Privatization in place:

New law—Prohibits privatization in place unless specifically authorized by the commission.

Old law—No such provision.

10. Disposal of property:

New law—Requires the Secretary of Defense to obtain fair market value for economic development conveyances in most cases, unless the Secretary determines the circumstances warrant a below cost or no cost conveyance.

Old law—Granted the Secretary great discretion to provide below cost or no cost conveyances.

New law—Authorizes the secretary concerned to pay to the recipient of the former base the amount by which the estimated cost to the recipient to clean up the BRAC site exceeds the value of the property.

Old law—No such provision.

New law—Authorizes the secretary concerned to transfer closed property to a local redevelopment authority for the purpose of leasing the property to another federal agency at no cost. This authority was made retroactive to cover past BRAC rounds.

Old law—No such provision.

New law—Authorizes the secretary to transfer BRAC property to any party in exchange for military construction or military housing of comparable value. Such authority specifically allows the transfer of property considered in the redevelopment plan as essential to the reuse or redevelopment of the installation (provision added by Section 2814 of the FY 2003 National Defense Authorization Act and expanded upon by Section 2805 of the FY 2004 National Defense Authorization Act). Previous BRAC properties are not exempted.

Old law—Specifically prohibited the transfer of land considered by the redevelopment plan as essential to the reuse or redevelopment of the installation.

11. Base Closure account:

New law—Requires the Secretary of Defense to establish a new base closure account. Funds deposited into this account received for the residual value of nonappropriated fund assets may be expended by the Service Secretary concerned without further appropriations.

Old law—A single fund existed for the previous four rounds of BRAC. Funds attributable to nonappropriated fund assets could not be expended unless appropriated by law.